**COMMONWEALTH OF MASSACHUSETTS**

**DEPARTMENT OF TELECOMMUNICATIONS AND ENERGY**

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| In re: Petition of Town of Brookline, City of Chelsea, Town of Framingham, and Town of Winchester | ) | D.T.E. 01-58 |

**ANSWER OF RESPONDENT BOSTON EDISON COMPANY**

Now Comes the Respondent, Boston Edison Company, d/b/a NSTAR Electric, in answer to the Allegations contained in the Petition of the Town of Brookline, City of Chelsea, Town of Framingham and Town of Winchester (the "Petitioners"), and states as follows:

1. The Respondent is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 1 of the Petition, and therefore is unable to admit or deny the allegation.

2. The Respondent is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 2 of the Petition, and therefore is unable to admit or deny the allegation.

3. The Respondent is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 3 of the Petition, and therefore is unable to admit or deny the allegation.

4. The Respondent is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 4 of the Petition, and therefore is unable to admit or deny the allegation.

5. The allegations contained in paragraph 5 of the Petition call for a legal conclusion, and therefore the Respondent is not required to admit or deny the allegation. Nonetheless, the Respondent answers further that it does not dispute the jurisdiction of the Department of Telecommunications and Energy (the "Department") to resolve disputes that may arise relating to the provisions of G.L. c. 164, § 34A.

6. Regarding paragraph 6, the Respondent admits that on December 9, 1999 it sent the Town of Brookline ("Brookline") a letter in response to its inquiry dated October 4, 1999 (attached as NSTAR Exhibit A) regarding information about the streetlight equipment located within the community. The Respondent answers further that the October 4, 1999 correspondence from Brookline was similar to a number of inquiry letters sent by other communities during this same time period. The Respondent denies that its December 9, 1999 letter was a purchase price offer or that it established the price of the streetlights in Brookline.

7. Regarding paragraph 7, the Respondent admits that on November 2, 1999 it sent the City of Chelsea ("Chelsea") a letter in response to its inquiry dated August 11, 1999 (attached as NSTAR Exhibit B) regarding information about the streetlight equipment located within the community. The Respondent answers further that the August 11, 1999 correspondence from Chelsea was similar to a number of inquiry letters sent by other communities during this same time period. The Respondent denies that its November 2, 1999 letter was a purchase price offer or that it established the price of the streetlights in Chelsea.

8. Regarding paragraph 8, the Respondent admits that on December 7, 1999 it sent the Town of Framingham ("Framingham") a letter in response to its inquiry dated August 27, 1999 (attached as NSTAR Exhibit C) regarding information about the streetlight equipment located within the community. The Respondent denies that its December 7, 1999 letter was a purchase price offer or that it established the price of the streetlights in Framingham. The Respondent admits that it provided Framingham with revised streetlight investment documentation on or about August 2, 2000. The revised information corrected a numerical mistake that had been found on the information provided with the Respondent's December 7, 1999 correspondence. The Respondent denies that its revised streetlight investment documentation was a purchase price offer or that it established the price of the streetlights in Framingham.

9. The Respondent admits that on December 7, 1999 it sent the Town of Winchester ("Winchester") a letter in response to previous inquiries dated October 4, 1999 (attached as NSTAR Exhibit D) and December 3, 1999 (attached as NSTAR Exhibit E), respectively, regarding information about the streetlight equipment located within the community. The Respondent answers further that the December 3, 1999 correspondence from Winchester was similar to a number of inquiry letters sent by other communities during this same time period. The Respondent denies that its December 7, 1999 letter was a purchase price offer or that it established the price of the streetlights in Winchester. The Respondent admits that it provided Winchester with revised streetlight investment documentation (attached as NSTAR Exhibit F). The revised information

corrected a numerical mistake that had been found on the information provided with the Respondent's December 7, 1999 correspondence. The Respondent denies that its revised streetlight investment documentation was a purchase price offer or that it established the price of the streetlights in Winchester.

10. The Respondent denies the allegations contained in the first sentence of paragraph 10. The second sentence is unclear with respect to the meaning of the terms "equivalent" and "used by the parties" and therefore the Respondent is unable to admit or deny the allegation. The Respondent answers further that a number of methodologies and calculations were prepared in the course of the streetlight dispute involving the communities of Lexington and Acton.

11. Regarding paragraph 11, the allegation refers to an "above-described methodology for calculating the un-amortized investment of streetlight plant," but there is no such description and therefore the allegation is unclear and the Respondent is unable to admit or deny the allegation. The Respondent answers further that it acknowledges that it has refined its methodology for computing unamortized streetlight investment and has so informed the Petitioners.

12. The Respondent is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 12 of the Petition, and therefore is unable to admit or deny the allegation.

13. Regarding paragraph 13, the Respondent admits that it has informed the Petitioners that the purchase price calculation previously provided is no longer valid. The Respondent also admits that it informed the Petitioners that, in furtherance of the merger of BEC Energy and COM/Energy, the Respondent was

in the process of unifying various processes and procedures, one of which was the method for calculating the purchase price of the streetlight equipment subject to sale under the Electric Restructuring Act of 1997.

14. Regarding paragraph 14, the Respondent admits that the letters to the Petitioners contain the referenced quotation. The Respondent answers further that the Petitioners have stated in correspondence that they do not want to purchase the underground-fed streetlight equipment unless certain issues are resolved. This type of "patch work" partial purchase is inconsistent with the provisions of G.L. c. 164, § 34A. G.L. c. 164, § 34A, read in its entirety, permits a municipality to convert the streetlighting service from a system in which the electric company owns the streetlighting equipment and provides streetlighting service at a tariffed rate to a system in which the municipality owns the equipment and the electric company provides distribution (and if desired, generation) service to the municipality on a tariffed basis. If the municipality invokes its rights under G.L. c. 164, § 34A, it must either purchase all of the equipment formerly used by the electric company to provide the streetlighting service, or require the electric company to remove any equipment not acquired. If it chooses to have the electric company remove equipment, it must compensate the electric company for the unamortized investment in the equipment and for the cost of removal. G.L. c. 164, § 34A is reproduced in its entirety as NSTAR Exhibit G, attached hereto. The right granted to municipalities in Section 34A(b) to "acquire all or any part of such lighting equipment" refers to a municipality's right to secure possession of an electric Respondent's streetlighting plant. It does not relieve the

municipality of the responsibility to compensate the electric company for those streetlights within the municipality that the municipality chooses not to possess after conversion. This interpretation is supported by the requirement in the statute that a municipality "pay to the electric company the cost of removal [of unacquired streetlighting plant] by the electric company, along with the unamortized investment allocable to such unacquired part, net of any salvage value attributable to the removed equipment." G.L. c. 164, § 34A(b). Accordingly, Section 34A does not envision dual (or multiple) ownership of a streetlighting system within municipalities and, thus, the Petitioner's interpretation of the statutory standard in Section 34A is inapt and should not be adopted by the Department.

15. Regarding the first sentence of paragraph 15, the Respondent admits that it has met on several occasions with the Petitioners, either individually or collectively, over the last two years, discussing various issues associated with the potential purchase of the streetlight equipment by these communities. Regarding the second sentence of paragraph 15, the Respondent denies that it is not willing to negotiate any issue. The Respondent answers further that, it is not willing to agree to a "partial purchase" because, as described in paragraph 14, a partial purchase is not contemplated by the Act. The Respondent has advised the Petitioners that it has revised its methodology for determining the purchase price, but it has not as yet presented purchase prices applying the Respondent's revised methodology, because that same methodology is presently under review by the Department in a dispute brought by communities in the Cape Light Compact in

D.T.E. 01-25. The Respondent believes that it would be appropriate to await a final decision from the Department in that proceeding before presenting calculations based on a methodology that is being considered at this time.

16. Regarding paragraph 16, Petitioners' Request for Relief, the Petitioners ask the Department to "instruct the Respondent that the statutory standard regarding the compensation to be paid, in the event of a partial purchase is the 'unamortized investment allocable to such acquired equipment'…". The Respondent states the Petitioners are correct that the amount to be paid for acquired equipment is the unamortized investment, but the statute requires that any equipment that the municipality does not wish to acquire be removed by the electric company and that the municipality pay for the unamortized investment in that equipment, plus removal costs. Any implication that an electric company may be required under the statute to maintain a portion of its existing streetlighting service if a municipality invokes the provisions of G.L. c. 164, § 34A, is inconsistent with that statute.

17. Regarding paragraph 17, Petitioners' Request for Relief, the Respondent opposes the Petitioners' request to the Department that it reaffirm the pricing methodology approved in D.T.E. 98-89 and order the Respondent to provide updated purchase prices in accordance with the depreciation rates and unamortized investment formula used in that proceeding. The Respondent's method of valuing streetlighting equipment for implementing the provisions of G.L. c. 164, § 34A has evolved since the passage of the Act and from its initial conversions of streetlights in Acton, Arlington, Bedford, Lexington, Newton and Stoneham. The

dispute resolved by the Department in D.T.E. 98-89 was limited and did not consider the overall methodology relating to the calculation of unamortized streetlighting equipment, which is presently under review in D.T.E. 01-25.

The methodologies first used by the Respondent were flawed and overly simplified the depreciation calculation. Consistent with the methodology pending in D.T.E. 01-25, the Respondent has corrected these flaws in its methodology, and its revised methodology is in accordance with the Respondent's accounting and ratemaking practices. The Respondent should not be required to continue to apply an incorrect methodology to calculate unamortized investment and is prepared to present the calculations to each of the Petitioners.

18. Regarding paragraph 18, Petitioners' Request for Relief, the Respondent denies the allegation that there are no facts in dispute. Because the Respondent has not as yet presented the Petitioners with final calculations, the Petitioners have not had an opportunity to accept or dispute the Respondent's figures. After presentation of the calculations, there may, or may not, be a dispute that would be brought before the Department. Although the issue of "partial purchase" is largely a matter of statutory interpretation, the Respondent would be entitled to present facts to the Department regarding the practical implications of the requested interpretation to inform the Department's decision-making. Stow Municipal Electric Department, D.T.E. 94-176-C at 3-4 (June 26, 2000 Hearing Officer Ruling On Scope of the Proceeding). As to the "reaffirmation" of the methodology presented in D.T.E. 98-89, as described above, the Department did not rule on the methodology applied in that case and therefore there is nothing to

"reaffirm." Moreover, the results of any previous dispute proceeding, while relevant to subsequent cases, are not dispositive of later disputes. Even if the Department had made a determination as to the overall methodology applied by the Respondent in that proceeding, which it did not, the Respondent would not be legally bound to apply that methodology or prohibited from proposing to revise the approach to correct a flaw. The Respondent is entitled to present evidence and argument to support its position in this proceeding, as was the case in D.T.E. 01-25.

**WHEREFORE**, the Respondent, requests that the Department:

1. Deny the relief requested by the Petitioners; and

2. Grant such other relief as the Department deems necessary and appropriate.

Respectfully submitted,

**NSTAR ELECTRIC**

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